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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - X
NATIONAL UTILITY SERVICE, INC., :

Plaintiff, :

:
-against-
:

TIFFANY & CO. and
TIFFANY AND COMPANY, :

Defendants. :

- - - - - X

DEPOSITION of National Utility Service, Inc.,
by CHRISTINE AMUNDSEN, taken by Defendants at the
offices of Dreier LLP, 499 Park Avenue, New York,
New York on Tuesday, March 4, 2008, commencing at
10:13 a.m., before Elizabeth Santamaria, a Certified
Shorthand (Stenotype) Reporter and Notary Public
within and for the State of New York.

8 (Pages 26 to 29)

Page 26	Page 28
<p>1 Amundsen 2 implemented by that customer? 3 A. Yes. 4 Q. Give me a -- more than five? 5 A. No. 6 Q. Approximately how many? 7 A. Three. Three. 8 Q. Does that include this case? 9 A. No. 10 Q. Did any of those cases where you 11 were involved in, the three cases, arise from a 12 billing mistake by the power company? 13 A. No. 14 Q. Have you ever been involved at NUS 15 in any other lawsuit that arose from a claim for a 16 fee because of a billing mistake? 17 A. Well -- no. 18 Q. Have you ever been involved in 19 another case at NUS where a new meter was 20 installed by the power company and mistakenly 21 mistagged to another customer? 22 A. No. 23 Q. So is it fair to say that the first 24 time you have ever personally been involved in a 25 case at NUS which concerned a mistagged meter</p>	<p>1 Amundsen 2 Minolta Corporation. 3 Q. In New Jersey? 4 A. Yes. And I prepared income taxes 5 for H & R Block. 6 Q. Anything else you did after college 7 and before joining NUS? 8 A. I had a six-month position with IBM. 9 It was just a temporary position. And I spent 10 many years just raising my two children. 11 Q. And was NUS the first time you had 12 been involved in the energy business? 13 A. Yes. 14 Q. Is there a standard percentage that 15 you generally are compensated based upon your 16 generation of revenue? 17 A. Yes. 18 Q. What is that percentage? 19 A. .1 percent. 20 Q. .1 percent? 21 A. Yes. 22 Q. One-tenth of 1 percent? 23 A. Yes. 24 Wait, excuse me. I might have 25 misstated that,</p>
<p>1 Amundsen 2 would be this case? 3 A. Yes. 4 Q. And are you aware of NUS ever having 5 sued any other customer before to recover a fee 6 based upon a mistagged meter? 7 A. I'm not aware. 8 Q. Is your compensation dependent 9 upon -- withdrawn. 10 Do you receive the equivalent of a 11 commission compensation? 12 A. As part of my salary? 13 Q. Yes. 14 A. Yes. 15 Q. So if and to the extent NUS has a 16 recovery in this case, do you get a percentage of 17 the recovery? 18 A. To the best of my knowledge, no. 19 Q. Why would that be? 20 A. Because once we incur legal costs, 21 the consultant is no longer entitled to 22 commission. 23 Q. Prior to joining NUS 22 years ago, 24 what did you do? 25 A. I worked customer service for</p>	<p>1 Amundsen 2 .01. 1 percent. 3 Q. You are saying 1 percent? 4 A. Yes, 1 percent. 5 Q. 1 percent of revenue? 6 A. Yes. 7 Q. So \$10,000 for every million dollars 8 of revenue; is that right? 9 A. Yes. 10 Q. Do you get a commission report on a 11 regular basis? 12 A. No. 13 Q. Is it part of a year-end bonus? 14 A. No. 15 Q. How are you compensated for 16 commission? 17 A. Once a month, dependent on reaching 18 target levels. 19 Q. The other thing, the other -- you 20 said a percentage of NUS's fees are generated from 21 shared savings. You said the other was from 22 revenue-producing activities. 23 A. Yes. 24 Q. What would those be? 25 A. Third-party supply broker</p>

12 (Pages 42 to 45)

Page 42	Page 44
<p>1 Amundsen 2 "R/C," right? 3 A. Right. But by that type of R/C, I 4 believe that's more of a designation. 5 Q. In looking at Exhibit 43 for 6 identification -- 7 First of all, have you ever seen 8 this before? 9 A. Yes. 10 Q. Does this document provide a history 11 of the recommendations made by NUS to Tiffany 12 during the life of the parties' relationship with 13 each other? 14 A. I believe so. 15 Q. And it would show both 16 recommendations that were made and then of those 17 recommendations which ones were implemented, 18 right? 19 A. Yes. 20 Q. And isn't it fair to say that if you 21 put aside the dispute in this lawsuit, all of the 22 recommendations contained on this document are 23 recommendations that were made by NUS for Tiffany 24 to lower its cost of a utility? 25 A. I have to go down the list and just</p>	<p>1 Amundsen 2 concerning the Manhasset store, there had not been 3 an instance where NUS had made a claim that there 4 was an estimated savings as a result of a 5 recommendation that was even in a six-figure 6 amount. Isn't that right? 7 A. Right. 8 Q. So from 1992 to 2006 an estimated 9 annual savings of the magnitude that is at issue 10 in this case had never arisen between the parties. 11 Is that right? 12 A. Right. 13 MR. MITCHELL: Please mark 14 this as Exhibit 44. 15 (Exhibit 44, two-page document 16 bearing Bates numbers T-1 - T-2, 17 marked for identification, as of this 18 date.) 19 THE WITNESS: May I take a 20 restroom break? 21 MR. MITCHELL: Sure. 22 (Recess taken.) 23 Q. Ms. Amundsen, you said in order to 24 get commission you have to hit a target number? 25 A. Yes.</p>
<p>1 Amundsen 2 verify if I think that's the case. 3 Yes. The recommendations were to 4 lower the cost. 5 Q. Am I correct in understanding the 6 column "Estimated Savings," that would be the 7 annual estimated savings, is that right, that was 8 projected by NUS? 9 A. It would be the estimated annual 10 savings or if it were a one-time savings. 11 Q. And if you look at the column 12 "Estimated Savings" there is not in any of the 13 implemented recommendations other than Manhasset, 14 any implemented recommendation that is even a 15 six-figure estimated savings. Isn't that right? 16 A. I'll just verify that. 17 On an annual basis. 18 Q. That's correct, right? 19 A. Right. 20 Q. Many of the estimated savings 21 figures are four figures on an annual basis. Is 22 that right? 23 A. Some are four, some are three, some 24 are five. 25 Q. So until this dispute arose with NUS</p>	<p>1 Amundsen 2 Q. What was your target number for 3 2006, 2007? 4 A. Target for collections for myself? 5 Q. Yes. 6 A. Fifty -- \$52,000 a month. 7 Q. What does that mean? Collected 8 revenues for NUS? 9 A. Yes. 10 Q. Did you hit your target for 2006? 11 A. Yes. 12 Q. How many accounts are you assigned 13 to, approximately? 14 A. Approximately 135. 15 Q. And the precise situation that arose 16 here, which was mistagging of meters at the 17 Manhasset store, you had never seen that before in 18 all of your years working at NUS, right? 19 A. Right. 20 Q. Now, I would like to hand you what 21 we have marked as Exhibit 44 for identification. 22 Ms. Amundsen, I have handed you what 23 has been marked as Exhibit 44 for identification. 24 Is this an e-mail you wrote to Bruce Mogel on or 25 about December 29, 2003?</p>

16 (Pages 58 to 61)

Page 58	Page 60
1 Amundsen	1 Amundsen
2 Q. Can you describe for me how this	2 A. Yes.
3 error was caught by NUS?	3 Q. And the chart which is attached to
4 A. A woman who works in the clerical	4 Exhibit 4 for identification reflects certain
5 department was – brought it to my attention. She	5 usage information, correct?
6 was looking at the bills.	6 A. Yes.
7 Q. Was it her responsibility to look at	7 Q. And it indicates that for the
8 those bills?	8 eight-day period of September 19, 2006 through
9 A. Yes.	9 September 27, 2006, the Manhasset store for
10 Q. And you say she was in the clerical	10 Tiffany used 61,920 hours of kilowatt-hours,
11 department. What were her job responsibilities at	11 right?
12 NUS?	12 A. Yes.
13 A. Primarily she would do billing. She	13 Q. And if I read this correctly, for
14 would create – she worked in creating invoices	14 the entire month of July 26, 2006 to August 28,
15 for billing.	15 2006, which is 33 days, the Manhasset store used
16 Q. And what is it that she saw on the	16 only 54,720 kilowatt-hours of power, right?
17 records of NUS to alert her to this issue?	17 A. Right.
18 MR. GOODMAN: Objection.	18 Q. So for an 8-day period in September,
19 MR. MITCHELL: Withdrawn.	19 the store was reflected as having used more power
20 Q. Did she tell you what she saw when	20 than it used for an entire 33-day period between
21 she discovered this issue?	21 July 26 and August 28, 2006, right?
22 A. Yes.	22 A. Right.
23 Q. What did she tell you?	23 Q. In your experience, that would
24 A. She said she – it looked like there	24 appear to be odd, wouldn't it?
25 was much higher usage than usual for this	25 A. Unusual.
Page 59	Page 61
1 Amundsen	1 Amundsen
2 particular account.	2 Q. And unless something unusual was
3 Q. And was this something that was	3 going on at the store to cause there to be such a
4 discovered because NUS monitors for its customers	4 significant increase in the use of power, it would
5 information that's contained on utility bills?	5 likely be a mistake of some kind, right?
6 A. I would say it was discovered as a	6 A. Yes.
7 result of monitoring, yes, the bills.	7 Q. So you knew that already on
8 Q. And you monitor the bills because	8 November 15, 2006, that unless there was some
9 that's part of the services you provide to your	9 explanation for using that much power, probably
10 customers, right?	10 somewhere along the line there was a mistake,
11 A. We monitor them for many reasons.	11 right?
12 Q. That's one of the reasons?	12 A. Yes.
13 A. That's one of the reasons.	13 MR. MITCHELL: Let me have the
14 Q. As part of performing your normal	14 court reporter mark as Exhibit 45 for
15 and customary services for Tiffany, someone in the	15 identification a document Bates
16 clerical department brought to your attention what	16 stamped T968 and 969, which is a LIPA
17 appeared to be an abnormal spike in usage at the	17 bill to Tiffany and Company, bill date
18 Manhasset store, right?	18 10/6/2006.
19 A. Yes.	19 (Exhibit 45, document bearing
20 Q. Did you take a look at the bills	20 Bates numbers T968 - T969, marked for
21 yourself?	21 identification, as of this date.)
22 A. I believe she brought them over to	22 Q. Ms. Amundsen, I am handing you what
23 my desk.	23 has been marked as Exhibit 45 for identification.
24 Q. So you actually saw the physical	24 Is this a bill for Tiffany that you looked at
25 bills, correct?	25 at or around the time you were advised of the

21 (Pages 78 to 81)

Page 78	Page 80
<p>1 Amundsen</p> <p>2 investigate forward, your initial thought was to 3 treat it as a rate issue, right?</p> <p>4 A. No.</p> <p>5 Q. You took it to the rate department, 6 right?</p> <p>7 A. They handle everything that has to 8 do with recommendations, reports, analysis. 9 They're the people that don't leave the office.</p> <p>10 Q. But if I understood you correctly, 11 you had never had a situation of a mistagged meter. 12 before. Right?</p> <p>13 A. Right.</p> <p>14 Q. And as far as you're aware, NUS had 15 never had this situation before, right?</p> <p>16 MR. GOODMAN: Objection.</p> <p>17 Q. To your knowledge, you are not aware 18 of it ever having happened at NUS?</p> <p>19 A. A mistagged meter?</p> <p>20 Q. Yes.</p> <p>21 A. To my knowledge, that's right.</p> <p>22 Q. So you were operating at the outset 23 as if this was something that was more within what 24 you would normally and usually see in your 25 day-to-day activities working for NUS, right?</p>	<p>1 Amundsen</p> <p>2 Q. Now, if we jump forward to the 3 resolution, the resolution of the problem was 4 handled by an investigation that was conducted by 5 LIPA, right?</p> <p>6 MR. GOODMAN: Objection.</p> <p>7 A. Numerous people were involved in the 8 investigation.</p> <p>9 Q. Well, you never went to the 10 premises, correct?</p> <p>11 A. Correct.</p> <p>12 Q. Did anyone for NUS ever look at the 13 meters?</p> <p>14 A. Not to best of my knowledge. We 15 offered, I believe.</p> <p>16 Q. But you didn't go, correct?</p> <p>17 A. Yes.</p> <p>18 Q. There were representatives of LIPA 19 that looked at the meter, correct?</p> <p>20 A. Yes, based on our asking them to do 21 so.</p> <p>22 Q. Just people that went. Okay?</p> <p>23 A. Yes.</p> <p>24 Q. The people that went was somebody 25 from LIPA, right?</p>
<p>1 Amundsen</p> <p>2 A. We're talking about a spike in 3 usage? That's a scene in my day-to-day 4 activities.</p> <p>5 Q. And your assumption as you are 6 proceeding at the beginning is that at least the 7 meter is recording usage for the premises that's 8 getting the bill, right? That's your assumption?</p> <p>9 A. Yes.</p> <p>10 Q. So you did not operate from the 11 assumption at the outset that Tiffany was actually 12 receiving a bill for usage of another premises, 13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. So your mind set was this could be a 16 problem with the rate that's being applied to 17 Tiffany's usage, correct?</p> <p>18 A. No. That wasn't my mind set.</p> <p>19 Q. Did you have any mind set at all 20 about what you thought it might be when you go and 21 speak with Mr. —</p> <p>22 A. Mr. Hoffman.</p> <p>23 Q. — Mr. Hoffman?</p> <p>24 A. No, I didn't have — I thought this 25 is something for the rate department to look into.</p>	<p>1 Amundsen</p> <p>2 A. Yes.</p> <p>3 Q. And there was someone from the 4 electrical contractor who was hired by the 5 landlord, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Albertson Electric?</p> <p>8 A. Yes.</p> <p>9 Q. Those are the people that physically 10 inspected the boxes, correct?</p> <p>11 A. Based on our asking them to look at 12 it.</p> <p>13 Q. Right. You communicated to the 14 power company that we have observed something 15 unusual and the power company sent someone out to 16 look at it, right?</p> <p>17 A. Yes.</p> <p>18 Q. That's what happened?</p> <p>19 A. Yes.</p> <p>20 Q. And in addition the landlord's 21 contractor took a look at it?</p> <p>22 A. Yes.</p> <p>23 Q. And ultimately it was the 24 observations of the people who took a look at this 25 that concluded that there was a problem in the</p>

22 (Pages 82 to 85)

Page 82	Page 84
<p>1 Amundsen 2 tagging of the meters, correct? 3 MR GOODMAN: Objection. 4 A. There is an element in there of our 5 rate department discerning that it wasn't just the 6 multiplier being responsible for the spike, so 7 that caused the ultimate investigation and result. 8 Q. Ms. Amundsen, what prevented you 9 from contacting the power company on November 16, 10 2006 and saying to the power company, "We have a 11 client that has a very unusual bill for last 12 month. Could you take a look at that, please?" 13 What stopped you from doing that? 14 A. That would have been premature on my 15 part. 16 Q. Well, Mr. Mogel simply said 17 investigate it on November 16th, right? 18 A. Right. 19 Q. And then he left it to your judgment 20 to determine the manner in which you would 21 investigate it, right? 22 A. Yes. 23 Q. And I'm asking you now, what 24 prevented you from just picking up the phone, 25 contacting someone at the power company and</p>	<p>1 Amundsen 2 Q. Isn't it? 3 A. It seems simple, but it's not the 4 way we handle cases procedurally. We rely on our 5 rate department for analysis. 6 Q. To build up the file? 7 A. Build up? 8 MR GOODMAN: Objection. 9 Q. I'm just asking. To build up the 10 file? 11 A. No, not to the build up. For advice 12 and review and insight. 13 Q. Isn't it what you ultimately did? 14 Didn't you ultimately call LIPA? That's what you 15 did. 16 MR GOODMAN: Objection. 17 A. Not before we did our own group 18 review and study of what possibilities could be, 19 sought to make sure we had complete historical 20 data. It's a process, it isn't a quick pick up 21 the phone, talk to the utility. 22 Q. Well, that's what you did, right? 23 A. Eventually. 24 Q. And when you picked up the phone and 25 talked to the utility, in that first conversation</p>
<p>1 Amundsen 2 saying "This bill looks strange. The client 3 tells me they haven't done anything unusual. Why 4 is there so much usage reflected"? Why couldn't 5 you do that? 6 A. I wouldn't normally do that. I 7 would consult with the NUS rate department first. 8 Q. Ms. Amundsen, by this period of time 9 you have been in this business for 20 years, 10 right? 11 A. Right. 12 Q. And you have already concluded, 13 based upon your communication with your client, 14 that it is likely that there is some mistake here, 15 right? 16 A. Right. 17 Q. The place where the mistake probably 18 happened is at the power company, right? 19 A. Right. 20 Q. So wouldn't it have been simple to 21 simply call someone, use your contacts at the 22 power company, pick up the phone and say, "Would 23 you please take a look at this bill"? That seems 24 to be very simple. 25 MR GOODMAN: Objection.</p>	<p>1 Amundsen 2 the utility told you it looks like the meters were 3 switched. Right? 4 MR GOODMAN: Objection. 5 Q. They didn't tell you that? 6 A. Oh, switched. When you said 7 switched, I had the wrong interpretation. They 8 said a new meter was installed, I believe. 9 Q. Didn't they also tell you that they 10 looked at the Polo meter at the same time? 11 A. Not that I recall. 12 Q. You don't recall that? 13 A. No. 14 Q. Isn't it true that when you talked 15 to the power company on December 26, 2006, that 16 the representative for LIPA pulled up on her 17 screen both the usage for Tiffany and Polo? You 18 don't remember that? 19 A. Not perfectly clearly, no. 20 Q. And you don't remember the person 21 telling you that when she looked at the screen, 22 she saw not only a spike in the Tiffany usage but 23 a similar decrease in the Polo usage at the same 24 time? 25 A. I remember hearing that, but I don't</p>

30 (Pages 114 to 117)

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<p>1 Amundsen 2 the rate department yet, right? 3 A. Correct. 4 Q. And your testimony earlier was that 5 this was something that the rate department would 6 look into, right? 7 A. Right. 8 Q. So between November 15th and 9 December 12th, this had not yet been turned over 10 to anyone else, right? 11 A. Right. 12 Q. Then on the 13th, December 13th, you 13 leave information, invoices on Paul Hoffman's 14 desk, right? 15 A. Yes. 16 Q. And he turns it over to Stephen 17 Schnaefer on December 19th, right? 18 A. Right. 19 Q. So between November 15th and 20 December 19th you are not aware of any 21 investigation having been conducted internally at 22 NUS into the Manhasset situation, right? 23 A. I'm not aware of anything that 24 transpired between those dates as far as 25 investigation.</p>	<p>1 Amundsen 2 investigation internally at NUS through 3 December 19, 2006, right? 4 A. Right. 5 Q. Okay. So do you know of any 6 investigation internally at NUS on December 20, 7 2006? 8 A. Yes. 9 Q. Okay. 10 A. Because it was the date that I was 11 given the cost analysis report. 12 Q. So whatever investigation had taken 13 place internally at NUS is reflected in Exhibit 2 14 for identification; is that correct? 15 MR. GOODMAN: Objection. 16 A. No. There could have been other -- 17 Q. Let me rephrase it. Let me withdraw 18 and rephrase the question. I will ask a different 19 one. 20 The only investigation about which 21 you are aware that would have taken place at NUS 22 is what is shown in Exhibit 2 for identification, 23 correct? 24 A. No. 25 Q. You know of other investigations?</p>
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<p>1 Amundsen 2 Q. And now we get to the 20th, which is 3 the following day, December 20, 2006, as reflected 4 in Exhibit 2 for identification. So at most -- 5 withdrawn. 6 Are you aware of any investigation 7 that was conducted at NUS on December 20, 2006? 8 A. By "investigation" do you mean 9 outside contact with the utility company? 10 Q. Well, my question to you is: What 11 was going on at NUS? 12 And if I understand you correctly, 13 you are not aware of any internal investigation 14 going on at NUS either. You don't know that, 15 right? 16 MR. GOODMAN: Objection. 17 A. Many times the rate analysts confer 18 with one another and they meet with Paul and 19 discuss that. 20 Q. I don't want possibilities. I want 21 to know what you know. 22 You are the account executive here, 23 correct? 24 A. Yes. 25 Q. So you do not know of any</p>	<p>1 Amundsen 2 You can testify with personal knowledge about 3 other investigations going on internally at NUS 4 between November 15th and December 19th, 2006? 5 A. Well, I was not privy to what went 6 on. So, okay, I cannot. 7 Q. And nothing was turned over to the 8 rate department by you until December 13, 2006, 9 correct? 10 MR. GOODMAN: Objection. 11 Asked and answered. 12 Q. Yes? 13 A. Yes. 14 Q. And then Mr. Hoffman turns it over 15 to Mr. Schnaefer on the close of business on the 16 19th, correct? 17 MR. GOODMAN: Objection. 18 Asked and answered. 19 A. Yes. 20 Q. So is it fair to say that it is your 21 understanding that the information contained in 22 Exhibit 2 for identification was compiled by 23 Mr. Schnaefer on December 20, 2006? 24 A. Yes. 25 Q. Now, what was the purpose of this</p>

46 (Pages 178 to 181)

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1 Amundsen 2 volunteering it. She made a statement 3 and I was cautioning her and I was 4 instructing her not to make statements 5 regarding what she reviewed with me. 6 And I think she answered your 7 question, but go ahead. Go ahead. If 8 you have more questions about when she 9 read it, then be my guest.	1 Amundsen 2 had said, "I agree to pay that amount," you would 3 have reported that in your client contact, right? 4 A. We don't -- It would have been very 5 unusual to -- for the conversation to be like 6 that. 7 Q. Your Report On Client Contact, in 8 fact, says that he questioned the amount. Right? 9 A. Right. 10 Q. So, in fact, he did not agree to it. 11 Right? 12 A. Right. 13 Q. And you indicated in your report 14 that Mr. Mogel did not agree to the shared savings 15 on a going-forward basis, right? 16 A. He asked us, "How is this going to 17 be handled going forward?" He was concerned. 18 Q. Right. And he actually did not 19 indicate agreement to you, right? 20 MR. GOODMAN: Objection. 21 Q. You would have said so if he had, 22 right? 23 MR. GOODMAN: Objection. 24 Asked and answered. 25 A. I said what he said from what I
1 Amundsen 2 these kinds of things? 3 A. It's company policy. 4 Q. Did anybody ever tell you where the 5 policy came from or where there is such a policy? 6 A. No. 7 Q. Nobody ever told you. Did you ever 8 ask? 9 A. No. 10 Q. Was it done to assist in lawsuits? 11 A. I never asked. 12 Q. Is it your understanding that it's 13 done to help lawsuits? 14 A. It's not my understanding that 15 that's the purpose of this. 16 Q. It's not. 17 A. The purpose of this is to keep an 18 exact record of what happens with the client. 19 Q. In your Report On Client Contact, 20 this document does not say that Mr. Mogel agreed 21 to the payment of the estimated savings amount 22 that was contained in Exhibit 2 for 23 identification, correct? 24 A. Correct. 25 Q. And I assume if he had agreed and he	1 Amundsen 2 recollected. 3 Q. In fact, he says, quote -- 4 Now, you have a sentence in here, 5 "I advised Bruce" -- referring to the onward 6 savings -- "that this was our standard business 7 model. That is, when a billing discrepancy 8 occurred and was corrected, we shared in any 9 refund to which the client was entitled and 10 subsequently billed for shared savings that 11 resulted with correcting the billing discrepancy." 12 You testified earlier that you had 13 never seen at NUS a circumstance where meters had 14 been mistagged, so what was the standard business 15 model that you are referring to here? 16 A. When I referred to standard business 17 model I meant our contract. 18 Q. So you did not know actually as you 19 wrote this memo whether in fact correction of a 20 mistagged meter for another customer constituted a 21 shared savings as a business model, right? You 22 didn't know that? 23 MR. GOODMAN: Objection. 24 A. The business model I was talking 25 about was our contract terms.

48 (Pages 186 to 189)

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<p>1 Amundsen 2 confused when you said "close quote." 3 Q. And you do not say anywhere that he 4 agreed with you on the shared savings concept, 5 right? 6 A. Right. 7 Q. Now, you note in your memo -- 8 Skimming down a sentence where the 9 sentence begins "However" you say -- your memo 10 says, "However, for the time being, he did not 11 want us to delay contacting the utility suppliers 12 and getting the problem corrected." 13 Was it your understanding that he 14 wanted you at least to get the problem corrected 15 and "We'll deal with the bill later"? 16 A. Yes. 17 Q. "Let's see what the problem is and 18 then we'll talk about it afterwards." Right? 19 A. That's -- I wouldn't necessarily 20 agree to your exact words. 21 Q. Generally is that it? 22 A. Let's work on getting the problem 23 corrected, that was my priority. 24 Q. And "We'll talk about the bill after 25 it's corrected," right?</p>	<p>1 Amundsen 2 Q. Let me show you what has been 3 previously marked as Exhibit 7 for identification. 4 It is a letter dated December 22, 2006. Did you 5 send that letter on December 22, 2006? 6 A. Yes. 7 Q. Did you send it before or after you 8 made the phone call? 9 A. I sent it before. 10 Q. Why -- 11 A. No, excuse me. I'm sorry. I sent 12 it -- when I couldn't get anyone at LIPA I decided 13 to fax the letter over. 14 Q. You didn't even have the name of 15 someone who was -- who you should talk to on this 16 account? 17 A. No, not at that time. 18 Q. So you just sent a letter to a 19 P.O. Box at Long Island Power Authority? That's 20 all you did? 21 A. I believe I faxed it over to a fax 22 number I had for LIPA, because it takes too long 23 through the mail and I wanted to get something 24 over there. 25 Q. You are saying it was a fax. I</p>
<p>1 Amundsen 2 A. Yes. 3 Q. Yes? 4 A. Yes. 5 Q. Now, December 22, 2006 was a Friday. 6 Do you recall that? 7 A. I believe it was, yes. 8 Q. And, in fact, you tried to call LIPA 9 that day, right? 10 A. Do you have a record that I did? 11 Q. Do you recall? 12 A. I just -- I probably did. I just -- 13 I rely heavily on my own files and records. 14 Q. Let me show you what has been marked 15 as Exhibit 10 for identification. This is an 16 e-mail at 3:29 p.m. on Friday, December 22, 2006 17 that you sent to Bruce Mogel. 18 A. Okay. Yes, I confirmed that I 19 called LIPA on that day. 20 Q. And they were closed for the 21 holiday, right? 22 A. Yes. 23 Q. So December 22, 2006 was the Friday 24 before Christmas weekend, right? 25 A. Yes.</p>	<p>1 Amundsen 2 don't see any indication of a fax there. Do you? 3 MR. MITCHELL: I don't recall. 4 Is there any document that was 5 produced with a fax cover sheet? 6 MR. GOODMAN: I have no fax 7 cover sheet. 8 Q. Is that just -- 9 A. I know how I handle the utility 10 companies and I don't ordinarily send things 11 through the mail to them, because at least with a 12 fax there is some record that it was received. 13 Q. Well, no record of any sending by 14 fax or receipt by the power company of this letter 15 has been produced. 16 A. Well, maybe the fact that 17 subsequently there is a response from the utility 18 shows that they received it. 19 Q. Well, would you agree with me at 20 least that sending a letter to LIPA at a P.O. Box 21 does not indicate any specific, you know, 22 increased knowledge that NUS was bringing about 23 how to get this to the attention of the Power 24 Authority? Would you agree with me? 25 A. No.</p>

49 (Pages 190 to 193)

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<p>1 Amundsen</p> <p>2 Q. You don't have a person you are 3 sending it to, you are just sending it to a 4 P.O. Box. Anybody can do that, can't they?</p> <p>5 MR. GOODMAN: Objection.</p> <p>6 A. We are making a specific reference 7 to one of the accounts, giving them the account 8 number, the meter number, the address. If I 9 had -- I'm telling you, maybe we can check fax 10 records to see that this was faxed. I don't know 11 how far back the records go.</p> <p>12 Q. All right. I presume that you took 13 off for Christmas weekend like everyone else.</p> <p>14 A. Yes.</p> <p>15 Q. And you didn't work Christmas Day, 16 which was Monday.</p> <p>17 A. Right.</p> <p>18 Q. So Tuesday, December 26th is the 19 next business day after your conversation with 20 Bruce Mogel that was reflected in your notes, 21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. And on that day you called LIPA and 24 spoke with a woman by the name of Cathy 25 Schwarting, right?</p>	<p>1 Amundsen</p> <p>2 MR. MITCHELL: Let me have the 3 court reporter mark as Exhibit 50 a 4 printout that we received from LIPA of 5 contacts for information, I guess, on 6 the Tiffany and Company account in 7 Manhasset. These were produced 8 pursuant to subpoena that was 9 delivered to LIPA.</p> <p>10 (Exhibit 50, document bearing 11 Bates numbers KS11 - KS14, marked for 12 identification, as of this date.)</p> <p>13 Q. Ms. Amundsen, I am handing you what 14 has been marked as Exhibit 50 for identification. 15 I presume you haven't seen this before.</p> <p>16 A. Right.</p> <p>17 Q. Is that correct?</p> <p>18 A. Right.</p> <p>19 Q. I would like to direct your 20 attention to the page Bates stamped KS14, which is 21 the last page of the document, and there are some 22 entries on December 26, 2006.</p> <p>23 A. Yes.</p> <p>24 Q. The first entry reading from the 25 bottom up says, "Issued field investigation"</p>
Page 191	Page 193
<p>1 Amundsen</p> <p>2 A. Yes.</p> <p>3 Q. When you were on the phone with 4 Ms. Schwarting, isn't it true that she pulled up 5 the records -- withdrawn.</p> <p>6 After you contacted Ms. Schwarting, 7 isn't it true that she told you she pulled up the 8 billing records for both Tiffany and Ralph Lauren 9 and noted that Tiffany's usage seemed high and 10 Polo's seemed low?</p> <p>11 A. I think initially we were looking at 12 just Tiffany and then she might have also looked 13 at the Polo.</p> <p>14 Q. Didn't she also tell you in that 15 phone call that it looked like you might be 16 looking at a switched meter situation?</p> <p>17 MR. GOODMAN: Objection.</p> <p>18 A. I don't recall the exact 19 conversation. I would have to read my own record 20 of it.</p> <p>21 Q. Do you remember discussing with 22 Ms. Schwarting the possibility that the meter for 23 Tiffany was switched with Polo in that 24 conversation on December 26, 2006?</p> <p>25 A. No.</p>	<p>1 Amundsen</p> <p>2 billing does not appear correct since meter 3 change. Also checking for possible switched 4 meters on 530-72-2225-2. Asking tech services to 5 expedite investigation. Contact Christine 6 (201)391-4300, extension 109. SPNB" — which I 7 assume is suspend — "billing until resolved."</p> <p>8 First of all, is that phone number 9 listed there your phone number?</p> <p>10 A. Yes.</p> <p>11 Q. So did you give Ms. Schwarting your 12 phone number when you spoke with her on the phone?</p> <p>13 A. Yes.</p> <p>14 Q. And that's your extension?</p> <p>15 A. Yes.</p> <p>16 Q. Does that refresh your recollection 17 that the subject of the switched meters came up in 18 your conversation at that time?</p> <p>19 A. It refreshes my recollection that I 20 spoke with Cathy Schwarting and I remember her 21 telling me she was going to assign Lisa Quinn to 22 handle it.</p> <p>23 Q. You see the next entry above it 24 which mentions an L. Quinn?</p> <p>25 A. Yes.</p>

50 (Pages 194 to 197)

Page 194	Page 196
<p>1 Amundsen</p> <p>2 Q. It says, "Suspend billing:</p> <p>3 Elec;" -- which is standing for electric --</p> <p>4 "Switched MTR" -- which stands for meter --</p> <p>5 "Investigate C/S - Christine: Phone: KAS/RBS and</p> <p>6 L. Quinn." Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. So does that refresh your</p> <p>9 recollection that the reason Lisa Quinn was being</p> <p>10 assigned was to look into a switched meter</p> <p>11 situation?</p> <p>12 A. I thought the first thing they were</p> <p>13 looking at was the meter multiplier situation, so</p> <p>14 this seems earlier than my recollection of talking</p> <p>15 about a switched meter.</p> <p>16 Q. Obviously we can get Schwarting in</p> <p>17 to talk about this. Do you have any reason to</p> <p>18 dispute that this is accurate?</p> <p>19 A. No.</p> <p>20 Q. The next entry says, "Correct</p> <p>21 possible switched meter with R. Lauren Polo</p> <p>22 account 350-72-2180-8. Asking tech services to</p> <p>23 expedite" -- "tech serv to expedite."</p> <p>24 So there are three entries in LIPA's</p> <p>25 records which reflect the subject of switched</p>	<p>1 Amundsen</p> <p>2 Q. That was an e-mail that you sent</p> <p>3 internally at NUS, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And that was an e-mail you sent at</p> <p>6 or around the time of your telephone call with</p> <p>7 Cathy Schwarting of LIPA, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And this memorandum was written on</p> <p>10 the same day as the notes that we looked at that</p> <p>11 are reflected in the LIPA records that are part of</p> <p>12 Exhibit 50 for identification, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Now, why were you writing to Arnold</p> <p>15 Frankel about this?</p> <p>16 A. Because I think Arnold became aware</p> <p>17 of the fact that we were investigating this for</p> <p>18 Tiffany.</p> <p>19 Q. Between Friday the 22nd and Tuesday</p> <p>20 the 26th you became aware?</p> <p>21 A. Yes.</p> <p>22 Q. Who made him aware? Did you tell</p> <p>23 him?</p> <p>24 A. I went to talk to him after I had my</p> <p>25 conversation with Bruce.</p>
<p>1 Amundsen</p> <p>2 meters. In looking at that now, does that refresh</p> <p>3 your recollection that Ms. Schwarting had pulled</p> <p>4 up the Polo and Tiffany accounts and told you in</p> <p>5 that conversation it looked like the meters were</p> <p>6 switched?</p> <p>7 A. No. I remember having conversations</p> <p>8 and I seem to recall the gist of the conversation</p> <p>9 was the meter multiplier issue, that the wrong</p> <p>10 multiplier had been applied to the meter.</p> <p>11 MR. MITCHELL: Let me have the</p> <p>12 court reporter mark as Exhibit 51 for</p> <p>13 identification an e-mail from</p> <p>14 Christine Amundsen to Arnold Frankel,</p> <p>15 CC'ing David Brown, Paul Hoffman, Sean</p> <p>16 Graham and Stephen Schnaefer, Bates</p> <p>17 stamped NUS88.</p> <p>18 (Exhibit 51, document bearing</p> <p>19 Bates number NUS00088, marked for</p> <p>20 identification, as of this date.)</p> <p>21 Q. Ms. Amundsen, I have handed you what</p> <p>22 has been marked as Exhibit 51 for identification.</p> <p>23 Is that an e-mail that you wrote on December 26,</p> <p>24 2006 at 1:34 p.m.?</p> <p>25 A. Yes.</p>	<p>1 Amundsen</p> <p>2 Q. Isn't it unusual for Mr. Frankel to</p> <p>3 be involved in a resolution of a problem for a</p> <p>4 customer?</p> <p>5 A. No.</p> <p>6 Q. Not unusual at all?</p> <p>7 A. No.</p> <p>8 Q. What was the purpose of your writing</p> <p>9 this e-mail?</p> <p>10 A. To update everyone on what I had</p> <p>11 discussed with LIPA and what LIPA was going to do</p> <p>12 Q. And you say in your e-mail that</p> <p>13 "When I gave her the details of the Tiffany</p> <p>14 account she looked at her screen and then advised</p> <p>15 she would call right back. Subsequently, she</p> <p>16 called and relayed the following."</p> <p>17 Does that refresh your recollection</p> <p>18 that she pulled up the account for Tiffany on her</p> <p>19 screen?</p> <p>20 A. Yes.</p> <p>21 Q. Does it also refresh your</p> <p>22 recollection, looking at this e-mail, that she</p> <p>23 pulled up the Ralph Lauren account?</p> <p>24 A. Yes.</p> <p>25 Q. So you say under your first bullet,</p>

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<p>1 Amundsen 2 information and belief, at no time prior to 3 receipt of the report was Tiffany aware of the 4 overcharges or the ongoing billing error for 5 electric service purchases at the Manhasset 6 store."</p> <p>7 The report is defined in this 8 complaint as the report and recommendation dated 9 December 20, 2006. You can see that in 10 Paragraph 45. Go back to Paragraph 45. You will 11 see the definition of "report."</p> <p>12 A. 45? 13 Q. Yes. 14 A. (Witness reviewed document.) 15 Q. Paragraph 57 is not true. Isn't 16 that right? 17 A. They were aware that there was a 18 spike in the usage. 19 Q. Because you told them on 20 November 15, 2006, right? 21 A. Yes. 22 Q. And that was five weeks before 23 Tiffany got the report, right? 24 A. Yes. 25 Q. Now, when you notified Tiffany in</p>	<p>1 Amundsen 2 A. He asked me to investigate it. 3 Q. Right. So he did take action. As 4 soon as you told him, the next day he said, 5 "Investigate." Right? 6 A. Yes. 7 Q. And Paragraph 59 alleges, "Upon 8 information and belief, at no time prior to 9 receipt of the report was Tiffany aware that its 10 electric service meter at the Manhasset store had 11 been replaced by LIPA." 12 Isn't it true that even you weren't 13 aware until the issuance of the report that the 14 meter had been changed at the Manhasset store? 15 A. Ycs. 16 Q. Now, Paragraph 54 of the complaint 17 alleges "As a result of NUS's efforts as set forth 18 above, it obtained refunds for Tiffany totaling 19 approximately \$67,021.58 for overcharges on its 20 electric service at the Manhasset store." 21 Is that true? 22 A. Yes. 23 Q. Now, putting aside this unique 24 situation that you had never seen before in any 25 relationship with a NUS customer, can you identify</p>
Page 279	Page 281
<p>1 Amundsen 2 November -- on November 15, 2006 about the spike 3 in usage, that was the first bill in which a spike 4 had occurred, right? 5 A. Yes. 6 Q. So as soon as NUS became aware of 7 the spike you notified Tiffany immediately, right? 8 A. We asked them about it, yes. 9 Q. And Tiffany as a regular practice 10 sent its utility bills to NUS be put on the NUS 11 direct system, right? 12 A. Yes. 13 Q. So on November 16, 2006, Mr. Mogel 14 asked you to investigate the overcharge, right? 15 A. Yes. 16 Q. Paragraph 58 says, "Upon information 17 and belief, at no time prior to the receipt of the 18 report had Tiffany taken any action to obtain a 19 refund of the overcharges for electric service 20 purchases or a correction of the electric service 21 bills for the Manhasset store to avoid future 22 overpays." 23 That's not true either, is it? 24 Mr. Mogel asked you on November 16, 2006 to 25 investigate this for Tiffany, right?</p>	<p>1 Amundsen 2 for me what is a more typical circumstance where 3 NUS would recover from a customer a percentage of 4 a refund and an ongoing savings? What is the most 5 typical way that happens? 6 A. One of the most typical ways is when 7 we identify a spike in a demand where there is a 8 clause or provision in the utility company rate 9 that should you reach that level, then it's 10 ratcheted, and you have -- going forward, they 11 would bill you at a higher level for a certain 12 period of time. 13 So we would identify the problem, 14 make the recommendation to investigate it and if 15 in fact it was an unusual spike in demand and it 16 was an error, then the utility would provide a 17 refund and then going forward we would bill the 18 client for the ongoing savings. 19 Q. What would the ongoing savings there 20 be? 21 A. It would depend on the amount the 22 utility charged per KW. It would depend on how 23 high the spike went. It depended on a few 24 different things. 25 Q. So there would be a change in rate</p>

Page 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x
NATIONAL UTILITY SERVICE, INC., :

Plaintiff, :

: against-

TIFFANY & CO. and
TIFFANY AND COMPANY, :

Defendants. :

- - - - - x

DEPOSITION of National Utility Service, Inc.,
by DAVID M. BROWN, taken by Defendants at the offices
of Dreier LLP, 499 Park Avenue, New York, New York on
Wednesday, March 5, 2008, commencing at 10:11 a.m.,
before Elizabeth Santamaria, a Certified Shorthand
(Stenotype) Reporter and Notary Public within and for
the State of New York.

13 (Pages 46 to 49)

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<p>1 Brown 2 of NUS to interface with Tiffany in an issue on 3 the fee as the person who is charged with "primary 4 responsibility in the area of client relations"? 5 A. I believe my boss took an interest 6 in all of this and he decided that he wanted to 7 lead or head those discussions. 8 Q. When did that happen? 9 A. I don't recall it being any kind of 10 a day where he anointed himself as being the 11 person that was going to lead, but three of us 12 went. Arnold attended the meeting as well, and 13 Arnold is my boss. 14 Q. Was that the first time that you 15 heard that Tiffany objected to the savings 16 component of the fee? 17 A. I don't recall. 18 Q. So is it fair to say that the, I'll 19 call it, "client relations" aspect of the dispute 20 between Tiffany and NUS over the savings component 21 of the fee was taken out of your hands by 22 Mr. Frankel? 23 A. No. 24 Q. Did you try to understand before 25 that meeting what Tiffany's objection was?</p>	<p>1 Brown 2 client and you never thought about how much that 3 actually was? Is that what you are saying? 4 MR. GOODMAN: Objection. 5 A. I did not testify that I am going to 6 this meeting to justify anything. We're going to 7 this meeting to meet with one of our clients. 8 I mean Tiffany was -- you know, was 9 considered a longer tenured client of ours. It 10 was an important client of ours. We were within 11 30 miles of their office, if you will. And Arnold 12 I believe made the decision that we should go in 13 there as the people that worked on this issue and 14 we should, you know, go over it. 15 It was a big ticket item. I could 16 tell you that. And we didn't feel that, you know, 17 it was just -- it just warranted us to stick a 18 bill in the mail and sending it off to them but 19 rather to go in and meet with them and discuss all 20 the things that we had done and how we were going 21 to proceed from this point on. But it wasn't 22 going in there to have a dispute. 23 Q. What research did you do to prepare 24 yourself for that meeting? 25 A. I don't recall.</p>
Page 47	Page 49
<p>1 Brown 2 A. My recollection is that we were not 3 going to that meeting with the intention of 4 discussing a dispute, but rather we were going to 5 this meeting to discuss, you know, everything that 6 had taken place and, you know, just meeting with a 7 client, if you will. 8 Q. You knew going into that meeting 9 that NUS was looking for a fee close to 10 \$1 million, right? 11 A. I knew we were going to that meeting 12 with the understanding that we were going to share 13 in the refund and the savings. I don't know 14 whether or not I put it in the frame, "I'm looking 15 for \$1 million." 16 Q. That's what NUS was looking for, 17 right? 18 A. Yes, I believe in our complaint that 19 is what we are seeking. But your question was 20 what my frame of mind was when I walked into the 21 meeting. I don't recall having that in my mind at 22 that time. 23 Q. So your testimony is that you're 24 going to a meeting in which NUS is looking to 25 justify the amount it's looking to charge its</p>	<p>1 Brown 2 Q. Were you aware when you went to that 3 meeting that the fee NUS was proposing to charge 4 was -- I'll use the word considerably larger than 5 any fee NUS had ever charged Tiffany throughout 6 the prior 15 years of the parties' relationship? 7 Did you know that? 8 A. I don't recall if I knew it was the 9 largest. It was a large fee. I understood it to 10 be that. I didn't understand it to be the largest 11 fee. 12 Q. Did you -- so you were not aware 13 that there was never a fee that NUS had charged 14 Tiffany that came anywhere close to the size of 15 the fee that NUS was proposing to charge for the 16 circumstances? 17 A. If your question is whether or not I 18 reviewed all the savings past and current at that 19 point, no, I did not. 20 Q. By the time of that meeting, did you 21 know what the billing problem at Manhasset had 22 been that caused NUS to get involved? 23 A. Yes. 24 Q. So all of the investigation into 25 what the problem was had been completed, right?</p>

17 (Pages 62 to 65)

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<p>1 Brown 2 Q. And the actual usage amount that 3 ultimately became the baseline for the refund was 4 consistent with the actual usage amount that 5 Tiffany had at the Manhasset store before the 6 error occurred, right? 7 A. Taking into account seasonal 8 variations, yes. 9 Q. Now, if we take the usual amount as 10 a baseline and the heightened amount, the 11 heightened erroneous amount, as the top number, 12 the refund of the difference between the 13 heightened amount and the baseline amount would 14 constitute, if I understand it by NUS's 15 allegations in the complaint, the refund component 16 of its claim. Is that correct? 17 MR. GOODMAN: Objection. 18 A. No, not exactly. 19 The January bill that was issued by 20 LIPA, and Con Ed Solutions had issued one, too, 21 was issued but that was an erroneous period, if 22 you will. But NUS is not claiming that January 23 period as part of the refund period. 24 Q. Tiffany didn't pay that bill, right? 25 A. No. We instructed them not to pay</p>	<p>1 Brown 2 "assumption" is used. The going-forward basis of 3 us participating in the savings is as a result of 4 the implementation of a recommendation which has 5 resulted in the lessening of a charge that Tiffany 6 is receiving on a going-forward basis. I don't 7 know -- I'm just having difficulty with this word 8 "assumption." Our claim is rooted within the 9 contract that we have. 10 Q. First of all, the contract doesn't 11 define in any way, shape or form this 12 circumstance. Would you agree with me? 13 A. Mistagging of meters? 14 Q. Correct. 15 A. No, it doesn't. 16 Q. And whether in fact the mistagging 17 of meters constitutes a savings under the contract 18 is not clearly spelled out in your contract, 19 correct? 20 A. I believe there is an understanding 21 in the contract that when you achieve a savings 22 for a client wherein they are not paying as much 23 on a going-forward basis as a result of the 24 implementation of a recommendation that we have 25 submitted, we participate in that savings.</p>
<p>1 Brown 2 that bill. 3 Q. So the only portion of the claim 4 that NUS identifies as the refund portion is the 5 difference between what Tiffany paid for 6 heightened usage and what it should have paid, had 7 it been getting bills for its own usage; is that 8 correct? 9 A. Right. It's for the period of seven 10 bills that Tiffany had received an erroneous bill 11 and Tiffany had made payment on those erroneous 12 bills. I believe it's seven. 13 Q. The savings component of NUS's 14 claim, as I understand it, is that NUS is 15 operating under an assumption that by obtaining 16 the refund for Tiffany, it also achieved for 17 Tiffany a going-forward savings. Isn't that 18 right? 19 A. Yes. 20 Q. So the assumption in NUS's claim for 21 a savings component of its fee is that Tiffany 22 would have paid bills reflecting heightened usage 23 at the Manhasset store but for NUS's assistance; 24 is that correct? 25 A. I don't know if the word</p>	<p>1 Brown 2 But whether something constitutes a 3 savings or not is the dispute in this case. Isn't 4 that what we are fighting over? 5 A. I believe that's why we are all here 6 today. 7 Q. So you would concede to me, would 8 you not, that there is nothing expressly written 9 in your contract that would say that correcting an 10 erroneous mistagging of meters is not only a 11 refund, but also a savings? There is nothing 12 expressly in the contract. 13 A. I will concede to you that the words 14 "mistagging of meters" does not exist in the 15 agreement. 16 Q. So would you also agree with me that 17 the word "savings" means that I am providing 18 something to you that causes you to pay less than 19 you otherwise would be paying? 20 A. Your savings is as a result of the 21 implementation of our recommendation, which causes 22 you to pay less. 23 Q. Is it your experience, Mr. Brown, 24 that this never would have been caught by anyone? 25 I mean, isn't that silly?</p>

19 (Pages 70 to 73)

Page 70	Page 72
<p>1 Brown 2 the scope of our review and if implement it, we 3 get paid on it. 4 Q. I am going to read you Paragraph 1 5 of your contract. It says, "We hereby authorize 6 you to submit recommendations for savings and 7 refunds on our costs of electricity, gas, oil and 8 petroleum products, water, sewage, steam and 9 telecommunications. You will analyze our costs 10 and advise us where refunds and reductions can be 11 obtained." 12 Isn't the intent of this agreement 13 that NUS is looking for utility savings that can 14 be achieved by customers on a going-forward basis 15 by obtaining for them better rates or other 16 efficiencies that will lower their cost for power? 17 Isn't that what this contract is really about? 18 MR. GOODMAN: Objection to the 19 form. 20 A. No. 21 Q. So you believe this contract is 22 about also -- 23 Let me rephrase that. Withdrawn. 24 You would concede to me, would you 25 not, that this contract does not assume that</p>	<p>1 Brown 2 forward payments. 3 Q. You used a reduction in costs on a 4 going-forward basis. That was I think what you 5 said, right? 6 A. That would be a savings, yes. 7 Q. Fine. 8 I know you want to take a break. 9 Give me two seconds here. 10 You understand that NUS identified 11 to Tiffany the spike in usage on the first bill, 12 right? 13 A. I believe we also identified there 14 were other periods of time in the report that they 15 were overpaying on their charges. 16 Q. Please, I know you want to say what 17 you want to say, but I am going to persist. 18 A. You are limiting -- the report -- 19 Q. The first notification from NUS came 20 after NUS saw the first bill with the spike. 21 Isn't that right? 22 A. I believe, yes. Christine had -- 23 Biancho had noticed the spike, 24 communicated that to Christine Amundsen, who 25 inquired with Bruce Mogel as to this potential</p>
Page 71	Page 73
<p>1 Brown 2 customers are receiving bills for other parties' 3 usage, right? 4 MR. GOODMAN: Objection. 5 Calls for a legal conclusion. 6 A. This contract does take that into 7 consideration because it's our cost. 8 Anything that reflects their cost of 9 the commodities that you have described that 10 result in them making overpayments that are 11 eliminated or reduced or what have you, but as a 12 result of implementing our recommendation, is 13 subject to our participation under this agreement. 14 Q. If there is a refund you participate 15 in the refund, right? 16 A. If there is a one-time refund, if 17 there is a defined period of time wherein an error 18 occurred and did not occur on a going-forward 19 basis and we are able to secure a refund or a 20 credit for a client, we would participate in that 21 refund. 22 Q. So the key is did not occur on a 23 going-forward basis? Is that the key? 24 A. It's what is collected back as far 25 as any erroneous payments are made, as well as any</p>	<p>1 Brown 2 spike in November of 2006. 3 Q. And the following day Bruce Mogel 4 asked Christine Amundsen to investigate. You know 5 that, right? You saw the e-mail? 6 A. I believe, yes 7 Q. So it was at the time Mr. Mogel 8 asked Christine to investigate a one-time event, 9 right? 10 A. No. 11 Q. It only became a one-time -- it only 12 became a multi-time event because NUS did not 13 immediately investigate. 14 A. No. 15 MR. MITCHELL: All right. We 16 can take a break. 17 (Recess taken.) 18 Q. Would you please, Mr. Brown, would 19 you take a look at Exhibits 4 and 5 for 20 identification. 21 Mr. Brown, I have handed you what 22 has been marked as Exhibits 4 and 5 for 23 identification. Those are e-mails in which you 24 are not shown as a recipient but they have been 25 marked previously at other depositions.</p>

24 (Pages 90 to 93)

Page 90	Page 92
<p>1 Brown 2 services that were provided by NUS under that 3 agreement, right? 4 A. I believe so, yes. 5 Q. So putting aside whether this 6 particular investigation falls under the agreement 7 itself, at a minimum Tiffany was a paying customer 8 of NUS for some services during the period of 9 time, November 16, 2006 forward. Right? 10 A. Yes. 11 Q. So as a customer of NUS, it asks its 12 utility consultant to investigate the problem 13 immediately, right? 14 MR. GOODMAN: Objection. 15 Q. Investigate. Investigate the 16 unusual usage pattern immediately. 17 MR. GOODMAN: Objection. 18 Q. Right? 19 A. No. 20 Q. The next day? 21 MR. GOODMAN: Objection. 22 A. Mr. Mogel did not use the word 23 "immediate" or "immediately." He said, "Please 24 investigate LIPA involvement." You are 25 mischaracterizing what Mr. Mogel had written back.</p>	<p>1 Brown 2 that there was no unusual usage pattern or there 3 was no activity at the store that would account 4 for an unusual usage pattern. Right? 5 A. Yes. 6 Q. So I assume you would at least agree 7 with me that he did not sit on this for a long 8 period of time, right? Mr. Mogel. 9 A. I will agree that he responded the 10 next day at 1:01 in the afternoon. 11 Q. Right. And he asked NUS to do 12 something. He asked a -- a customer asked NUS to 13 do something the next day, right? 14 MR. GOODMAN: Objection. 15 MR. MITCHELL: I will rephrase 16 the question. 17 Q. The next day when he gets back to 18 NUS, your customer asked your company to do 19 something, correct? 20 A. Yes. 21 Q. And you didn't do it right away, did 22 you? 23 A. Right away? 24 Q. Well, anywhere close to as quickly 25 as Mr. Mogel got back to Ms. Amundsen with a</p>
<p>1 Brown 2 Q. I'm sorry, Mr. Brown, but I see an 3 e-mail from Ms. Amundsen at 4:28 p.m. on Wednesday 4 November 15, 2006, advising of the "unusual usage 5 pattern" and asking whether there was anything 6 going on at the store that might account for the 7 "unusual usage pattern." Right? 8 A. Sure. 9 Q. Mr. Mogel, Exhibit 5 shows that he 10 received that e-mail. It was sent by Ms. Amundsen 11 at 4:28 p.m. At 4:34 p.m., Mr. Mogel is 12 canvassing people internally at Tiffany to see 13 whether they can answer Ms. Amundsen's question 14 about whether there was anything unusual going on 15 in the store. Right? 16 A. It appears that he did reach out to 17 other people within Tiffany regarding Christine's 18 e-mail, yes. 19 Q. Within minutes, right? 20 A. Yes, within minutes. And it does 21 cover into the next day as well, the next morning. 22 Q. And by 1:01 p.m. he's responding to 23 Ms. Amundsen that she should investigate the 24 involvement and forwarding to her all of the 25 responses from the people he canvassed to show</p>	<p>1 Brown 2 response. 3 A. Your question is assuming 4 Mr. Mogel's querying of other people within 5 Tiffany is equal to what Christine needed to do 6 thereafter. 7 Q. The recommendation that NUS 8 ultimately makes to Tiffany on December 20, 2006 9 has a recommendation that the first thing that NUS 10 will do is contact the utility, right? 11 A. Without having the document in front 12 of me, I believe yes, that is what is said. 13 Q. And Ms. Amundsen testified -- 14 withdrawn. 15 Ms. Amundsen is a direct report to 16 you, right? 17 A. Yes. 18 Q. So her day-to-day activities are 19 managed by you, right? 20 MR. GOODMAN: Objection. 21 A. Not her day-to-day activities. I 22 mean I'm not reviewing every minute of her day, 23 but she is a direct report to me. 24 Q. And she testified that you have 25 weekly meetings with the consultants in your</p>

26 (Pages 98 to 101)

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<p>1 Brown 2 remember about these internal discussions. 3 A. The one that I do remember was when 4 LIPA came back and told us that the problem 5 existed as a result of a meter multiplier, and I 6 remember reviewing the bills with Christine and I 7 believe also Paul Hofmann and I was coming or we 8 were coming to the conclusion that the corrective 9 action that they were suggesting was a 10 misdiagnosis, if I were to use my earlier 11 testimony. I don't think I used the word 12 "misdiagnosis" during the meeting, but it 13 didn't – it didn't seem right. It wasn't right. 14 It just wasn't adding up.</p> <p>15 Q. And how did you get involved in 16 those discussions? Do you recall?</p> <p>17 A. I don't recall specifically how I 18 became involved in those discussions, no.</p> <p>19 Q. Did Ms. Amundsen or Mr. Hofmann 20 bring you into the discussion to get another set 21 of eyes on the papers or was it something else?</p> <p>22 A. Again, I don't recall. I may have 23 approached them, they may have approached me. I 24 don't know.</p> <p>25 Q. Well, if you approached them</p>	<p>1 Brown 2 problem on a day-to-day basis, right? 3 A. I don't recall. I may have been 4 dealing with it on a day-to-day -- 5 Look, this is an area of my 6 responsibility and I may have wanted to be updated 7 on a day-to-day basis on this. I may have kept in 8 touch on it. I just don't recall how many times I 9 dealt with it or when the first time I became 10 aware of it.</p> <p>11 Q. "May have been involved" doesn't say 12 whether you were. Is your answer when you say you 13 may have been involved you don't remember?</p> <p>14 A. I was involved in this.</p> <p>15 Q. So I want to know everything -- 16 We already talked about the dealings 17 with Larry from Albertson's when Christine was 18 out. Other than that, you said that you also 19 recall a meeting and conversation with 20 Ms. Amundsen and Mr. Hofmann looking at the 21 changed multiplier and concluding that that was 22 not the resolution of the problem, right?</p> <p>23 A. No. We were looking at the 24 explanation that LIPA was putting forth as the 25 problem and I remember looking at the bills with</p>
<p>1 Brown 2 wouldn't that assume that you knew something about 3 it before then?</p> <p>4 A. And as I testified, I mean I do -- I 5 don't remember the first time that I became 6 involved in it but I do remember this one meeting. 7 So, yes, it would presuppose that I knew about it 8 before. Or I may not have and then just brought 9 it to --</p> <p>10 No, I did know about it before. I 11 just don't know when.</p> <p>12 Q. So what is the first thing you 13 remember having learned about this?</p> <p>14 A. I don't recall.</p> <p>15 Q. You were not someone throughout most 16 of this period who was dealing directly with this 17 problem, right?</p> <p>18 A. I was dealing directly with this 19 problem for a period of time, yes.</p> <p>20 Q. We went through that already. The 21 period of time where Ms. Amundsen was sick and you 22 stepped in for those few days, correct?</p> <p>23 A. Correct.</p> <p>24 Q. Other than that, you were not 25 dealing with the problem and the resolution of the</p>	<p>1 Brown 2 Ms. Amundsen and Mr. Hofmann. As I testified 3 before, I have a rate background or I have worked 4 with utility bills quite extensively within the 5 company.</p> <p>6 Q. So other than those two 7 circumstances, what else do you remember 8 specifically doing in connection with the 9 Manhasset problem that Tiffany had?</p> <p>10 A. I remember directing Christine 11 that -- after we looked at all of this is -- I 12 asked her to reach out to Tiffany to see whether 13 or not they had any kind of a connected load study 14 or connected load plan for the Manhasset store 15 that may explain the load profile or the load at 16 the store. The explanation that was being 17 provided from LIPA was only addressing the 18 specific amount of the usage. It wasn't 19 explaining the demand.</p> <p>20 Q. So other than that, now we have 21 three things. Anything else that you remember 22 specifically?</p> <p>23 A. Outside of my conversations when 24 Christine was taken sick?</p> <p>25 Q. You have now identified three: The</p>

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<p>1 Brown 2 looking for? 3 A. Here we go. 4 No. 5 Q. "No" what? 6 A. "No" to your question. 7 Q. Why is it "No"?</p> <p>8 A. It wouldn't have been the first time 9 that she was acting on the comment that she had 10 received back from Mr. Mogel.</p> <p>11 Q. Because she had tried to reach them 12 on Friday, the 22nd? Is that why you are saying 13 that?</p> <p>14 A. No. 15 Q. What was the reason? 16 MR. GOODMAN: I think he might 17 have misheard the question. I think 18 he is confused. 19 Q. The suggested action in the cost 20 analysis report is "We will initially approach the 21 provider to review this matter and correct your 22 billings." That was going to be the first thing. 23 We went through that before.</p> <p>24 Do you recall that? 25 A. Yes, that I recall.</p>	<p>1 Brown 2 at some point, so that it was not -- you were not 3 the primary person responsible for the client 4 relationship. Do you remember that? 5 A. I don't recall those exact words 6 being expressed but I do recall Arnold was 7 involved in this matter, yes. 8 Q. This e-mail is to Mr. Frankel 9 telling him that NUS had spoken with the billing 10 supervisor at LIPA. Do you see that? 11 A. Yes. 12 Q. Why would something like that be 13 sent to Mr. Frankel? 14 A. You have to ask Mr. Frankel. But -- 15 I'm not going to assume anything. 16 Arnold is the general manager within the office. 17 Again, I don't know why Christine would have sent 18 this to Arnold Frankel. 19 Q. Did you ever ask her? 20 A. No. 21 Q. Did you ever tell her that "You'd 22 better send this stuff to Arnold and keep him 23 involved in the Tiffany matter"?</p> <p>24 A. No. 25 Q. She was a direct report to you,</p>
Page 123	Page 125
<p>1 Brown 2 Q. Okay, good. 3 So Ms. Amundsen tried to speak with 4 someone at LIPA on Friday, December 22nd, in the 5 afternoon but they had left early for the holiday. 6 Do you recall that? 7 A. Yes. 8 Q. So the first substantive day of 9 communication with LIPA would be Tuesday, 10 December 26, 2006, correct? 11 A. Correct. 12 Q. That's the day she first spoke with 13 Ms. Schwarting, right? 14 A. I believe so, yes. 15 Q. And this e-mail in which you are 16 CC'd is also dated December 26, 2006 at 17 10:46 a.m., right? 18 A. Correct. 19 Q. So on the Tuesday after Christmas 20 weekend at 10:46 a.m. you are now being copied on 21 an e-mail that Ms. Amundsen is sending to 22 Mr. Frankel, right? 23 A. Yes. 24 Q. You said earlier that Mr. Frankel 25 became personally involved in the Tiffany matter</p>	<p>1 Brown 2 right? 3 A. As she is currently, yes. 4 Q. And you do not know, as you sit here 5 today, why she would send this kind of 6 communication to Mr. Frankel on the first 7 substantive communication she was having with LIPA 8 about the Tiffany matter? 9 A. No. She's free to send an e-mail to 10 whomever she wants within the company. 11 Q. You are CC'd on this, too. This is 12 the first time I see your name on any e-mail as 13 well. Do you see that? 14 A. I see that I am copied on this. 15 MR. GOODMAN: Objection. 16 Q. I am unaware of an earlier 17 communication involving the Manhasset billing 18 issue, which shows you as receiving an e-mail. 19 Are you aware of anything earlier than this? 20 A. I don't recall. 21 Q. Why were you CC'd on this? 22 A. Probably because, you know, 23 Christine reports to me and she wanted to keep me 24 in the loop. 25 Q. Well, you don't have a specific</p>

33 (Pages 126 to 129)

Page 126	Page 128
<p>1 Brown 2 recollection of being involved in creating the 3 cost analysis report, but then by the following 4 Tuesday you're in the loop on something that you 5 have no recollection of having been in the loop on 6 before. Can you explain that at all?</p> <p>7 A. I don't think there is a need to 8 explain. I mean she was a direct report of mine. 9 I believe I testified that I was aware of this. I 10 don't know when I specifically was aware and I 11 also testified that I may have been involved in 12 the creation of the report. I just don't have a 13 recollection of it, but –</p> <p>14 Q. But you are doing the best you can 15 to give me your complete knowledge today of 16 everything you remember.</p> <p>17 A. I'm doing the best I can to tell you 18 the truth.</p> <p>19 Q. And to give me the benefit of 20 everything you can honestly remember as you are 21 sitting here today, correct?</p> <p>22 A. That's correct.</p> <p>23 Q. And as you are sitting here today, 24 you have no recollection of why Ms. Amundsen was 25 reporting to Mr. Frankel about her first</p>	<p>1 Brown 2 account as it occurs."</p> <p>3 Q. Let me show you what has been 4 previously marked as Exhibit 51 for 5 identification. It's an e-mail also from 6 December 26, 2006, but at 1:34 in the afternoon.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. That's an e-mail that you also 10 received a CC of, right?</p> <p>11 A. Yes.</p> <p>12 Q. And that's an e-mail from 13 Ms. Amundsen to Mr. Frankel providing more 14 information about what she learned in her 15 conversation with Ms. Schwarting, right?</p> <p>16 A. Yes.</p> <p>17 Q. Now, and you were – 18 Do you have any explanation of why 19 so many people are in the loop on this situation?</p> <p>20 MR. GOODMAN: Objection.</p> <p>21 MR. MITCHELL: I will rephrase 22 it.</p> <p>23 Q. Do you have any reason why so many 24 people are being provided with detailed 25 information from Ms. Amundsen about what she was</p>
Page 127	Page 129
<p>1 Brown 2 communication with LIPA concerning the Manhasset 3 store, right?</p> <p>4 A. I don't know why she sent it to 5 Arnold. I don't see anything usual in her sending 6 it to Arnold either.</p> <p>7 Q. Did you ever discuss with Arnold 8 Frankel that he told her, "I want you to keep me 9 fully informed of everything you do for Tiffany in 10 Manhasset"?</p> <p>11 A. I don't recall that discussion.</p> <p>12 Q. Did you ever have any discussion 13 with Mr. Frankel about him wanting to be 14 personally involved in the resolution of the 15 Tiffany billing issue at Manhasset?</p> <p>16 A. I recall that Arnold wanted to 17 attend the meeting in late January, early 18 February. I think it was late January of '07, 19 that he wanted to attend that meeting. I think 20 there was some suggestion that it was just going 21 to be Chris and I to go and Arnold said, "No, I 22 would like to go as well." He wanted to come 23 along.</p> <p>24 But I don't recall Arnold saying, 25 you know, "I want to know every moment of this</p>	<p>1 Brown 2 doing with LIPA in connection with the Tiffany 3 store in Manhasset?</p> <p>4 A. I wouldn't classify this as being so 5 many people. I mean there are five people. There 6 is Arnold, there is myself, Paul Hofmann and Steve 7 Schnae. I wouldn't characterize this as being so 8 many people or unusual in any way.</p> <p>9 Q. Well, we have Mr. Frankel as the 10 person to whom this information is being sent. He 11 is the executive vice president, it says on your 12 website, "with primary responsibility for the 13 general management of the United States 14 operations."</p> <p>15 A. Correct.</p> <p>16 Q. Right?</p> <p>17 A. Correct.</p> <p>18 Q. Other than the Soutanians 19 themselves, he is the highest officer in the 20 company, right?</p> <p>21 A. No.</p> <p>22 Q. The Soutanians are both 23 co-presidents, right?</p> <p>24 A. Right.</p> <p>25 Q. And he is the only executive vice</p>

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1 Brown	1 Brown
2 Q. So you walked out of the meeting and	2 There is testimony in the record
3 dismissed what Mr. Palfini was saying out of hand.	3 that there were circumstances where rates went
4 Is that it?	4 back up after they had been reduced and NUS did
5 A. I remember walking out of the	5 not recover a full 60 months of reduced fees. Is
6 meeting feeling that, you know, we were at a	6 it your practice at NUS to collect 60 months of
7 difference of opinion as to the application of our	7 fees on a going-forward basis even if the rate
8 agreement.	8 does not remain reduced for the full 60 months?
9 Q. And it was your opinion that the	9 A. No.
10 "correction of the ongoing billing error" should	10 Q. What is your practice in that
11 result in NUS being paid a fee equal to 50 percent	11 circumstance?
12 of the amount of that billing error brought out	12 A. If the result of the recommendation
13 for a period of 60 months by a formula using	13 that is implemented goes away, we would not
14 60 months, correct?	14 continue to participate in the savings.
15 MR. GOODMAN: Objection.	15 Q. So if I understand your answer
16 Q. Let me rephrase that. That was	16 correctly, you look at what actually happens
17 inartful.	17 during that 60-month period in determining whether
18 Your contract requires in	18 the entirety of the 60-month period is paid as a
19 circumstances where there is a refund a payment of	19 fee, 50 percent of that savings as a fee, right?
20 a fee to NUS of 50 percent of the refund, correct?	20 A. The savings is reviewed on the
21 A. Correct.	21 period in which billing would be issued, in most
22 Q. And if there is a savings, a payment	22 cases on a monthly basis.
23 of 50 percent of the savings calculated over a	23 Q. Isn't it fair to say that in the
24 60-month period, correct?	24 circumstance of NUS's claim in this case to
25 A. Yeah. Those two components can	25 50 percent of the item identified as "savings" in
Page 167	Page 169
1 Brown	1 Brown
2 exist within the agreement, yes.	2 Paragraph 61 of the complaint, that the assumption
3 Q. The savings component would	3 is that this billing error would not have been
4 contemplate a fee to NUS based upon an assumption	4 discovered for 60 months?
5 that the client will realize the benefit of the	5 A. No. It assumes that the conditions
6 savings for a 60-month period and, therefore,	6 that measure a savings is still in existence
7 shares half of that amount with NUS as a fee.	7 during that month period and whether or not during
8 Correct?	8 the specific 60 months --
9 A. As I testified before, I don't	9 To give you an example is to give
10 consider it to be based upon an assumption. I	10 you if all of a sudden a year down the line LIPA
11 base it upon the fact that a correction is made	11 mistags these meters again and result in Tiffany's
12 and on a forward basis, if you will, they are not	12 increase in their bill as a result, let's say that
13 paying the ongoing billing error and as a result	13 happens during month 36, we wouldn't participate
14 that would constitute a savings under the	14 any more because they are paying based upon Polo's
15 agreement.	15 usages or the usage as recorded by that particular
16 Q. What happens in a circumstance where	16 meter.
17 you negotiate a reduced rate for a customer and	17 Q. But in making a claim for a fee
18 the rate only remains reduced for a period of	18 based on 60 months of projected savings as a
19 12 months and then goes back up after 12 months?	19 result of correcting the mistagged meters here
20 How much is NUS paid as a fee in that	20 there is no opportunity, because of the fact that
21 circumstance?	21 now the meter was corrected, to ever know when in
22 MR. GOODMAN: Objection.	22 fact either Polo or Tiffany would have discovered
23 A. Are we speaking entirely under a	23 the error if NUS hadn't identified it right away
24 contingency arrangement?	24 first. Right?
25 Q. Under the contract that Tiffany has.	25 A. Our participation in a savings is

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
NATIONAL UTILITY SERVICE, INC.,

Plaintiff,

-against- Case No:07CV3345 (RJS) (GWG)

TIFFANY & CO. and TIFFANY and COMPANY,

Defendants.

-----X

488 Madison Avenue
New York, New York

June 19, 2008
2:00 p.m.

DEPOSITION of DAVID M. BROWN,
an Expert Witness herein, taken by the Defendants,
pursuant to Article 31 of the Civil Practice Law &
Rules of Testimony, and Notice, held at the
above-mentioned time and place, before SARA FREUND,
a shorthand reporter and a Notary Public of the
State of New York.

8 (Pages 26 to 29)

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<p>1 D.M. Brown</p> <p>2 Q. Would you describe to me how that amount</p> <p>3 is calculated? What did you do to come up with</p> <p>4 that number that that amount is due NUS for that</p> <p>5 period?</p> <p>6 A. It's 50 percent of the gross savings for</p> <p>7 that particular month, which would have been</p> <p>8 \$23,536.33.</p> <p>9 Q. How did you calculate the gross savings</p> <p>10 of \$23,536.33?</p> <p>11 A. What was first done was taking the Polo</p> <p>12 meter readings, and then taking those meter</p> <p>13 readings and recalculating it off a meter</p> <p>14 multiplier of 180 to come up with what Tiffany</p> <p>15 would have been billed both in a consumption and</p> <p>16 demand as a result of those meter multipliers.</p> <p>17 Q. Are you saying for Polo's usage?</p> <p>18 A. It's not Polo's usage, it's Tiffany's</p> <p>19 usage. It's Polo's meter readings. And these</p> <p>20 meter readings are placed against the Tiffany meter</p> <p>21 multiplier of 180 which was in effect during the</p> <p>22 affected period, if you will, in late 2006. And in</p> <p>23 that, we come up with the KWH, which is the</p> <p>24 consumption, and we also come up with the KW both</p> <p>25 on, off and mid-peak. Taking that information</p>	<p>1 D.M. Brown</p> <p>2 that reflects readings that have to do with Polo</p> <p>3 Ralph Lauren, anything else on that page or the</p> <p>4 page Bates stamped 888?</p> <p>5 A. I believe your first question and your</p> <p>6 question now are a little bit different. Are you</p> <p>7 saying having something to do with --</p> <p>8 Q. Let me rephrase it.</p> <p>9 Are there any other places on this bill</p> <p>10 where usage of Polo Ralph Lauren is reflected?</p> <p>11 A. No.</p> <p>12 Q. Is there any other place on these two</p> <p>13 pages, Bates stamped 887 and 888, that reflect</p> <p>14 numbers that are attributable to Ralph Lauren as</p> <p>15 opposed to Tiffany?</p> <p>16 A. All of these numbers here would have</p> <p>17 been the Tiffany charges that were borne out of the</p> <p>18 Ralph Lauren readings.</p> <p>19 Q. So the portion of the page beneath</p> <p>20 "former billing rate 285" is the amount that NUS</p> <p>21 -- withdrawn.</p> <p>22 If I understand you correctly, the first</p> <p>23 page purports to create a bill for Tiffany based</p> <p>24 upon the Ralph Lauren usage that you circled; is</p> <p>25 that correct?</p>
Page 27	Page 29
<p>1 D.M. Brown</p> <p>2 then, and applying it to the Tiffany rate of 285</p> <p>3 with LIPA and calculating against that rate, and</p> <p>4 also taking it against the Con Ed Solution charges</p> <p>5 to come up with the commodity portion of that, you</p> <p>6 come up with the former billing, if you will, as to</p> <p>7 what they would have paid had the NUS</p> <p>8 recommendations not have been implemented. The</p> <p>9 second page of the bill demonstrates how they are</p> <p>10 presently being billed by both LIPA and Con Ed</p> <p>11 Solutions. And then taking that total, you put it</p> <p>12 to the first page, which is the present, and the</p> <p>13 difference between the total former charges and the</p> <p>14 present charges would give you the net savings of</p> <p>15 \$23,536.33 for which one-half of that would be due</p> <p>16 NUS.</p> <p>17 Q. Circle for me, if you would, everything</p> <p>18 on that page that's a Polo amount. I gave you my</p> <p>19 pen. On the page Bates stamped 887, what I would</p> <p>20 like you to do is, circle for me all of the</p> <p>21 readings on here that relate to the usage of Polo</p> <p>22 Ralph Lauren. Write next to that "RL," if you</p> <p>23 would.</p> <p>24 A. This is Ralph Lauren Polo.</p> <p>25 Q. Is there any place else on that bill</p>	<p>1 D.M. Brown</p> <p>2 A. Yes. It's based upon what would have</p> <p>3 been charged to Tiffany had the NUS recommendations</p> <p>4 not been implemented.</p> <p>5 Q. You keep saying "had the NUS." You're</p> <p>6 an expert now. You're not testifying as a fact</p> <p>7 witness. You don't know -- as an expert witness</p> <p>8 you're here testifying in a different capacity, you</p> <p>9 understand that?</p> <p>10 A. Yes.</p> <p>11 Q. Had the NUS recommendations not been</p> <p>12 implemented is NUS's claim in the case. You</p> <p>13 understand that?</p> <p>14 A. Yes.</p> <p>15 Q. You're not testifying here as an</p> <p>16 advocate today. I'm here to get your testimony as</p> <p>17 an expert. You understand the distinction?</p> <p>18 A. Yes.</p> <p>19 MR. GOODMAN: Objection.</p> <p>20 Q. Mr. Brown, the entire first page Bates</p> <p>21 stamped NUS 887, purports to create a bill in such</p> <p>22 a way that had Tiffany continued to receive charges</p> <p>23 for Polo Ralph Lauren's usage, it's NUS's position</p> <p>24 that this is the amount that that bill would have</p> <p>25 been; is that right?</p>

NATIONAL UTILITY SERVICE VS TIFFANY & CO

BRUCE EDSON - 2/27/08

CONCORDANCE AND CONDENSED TRANSCRIPT
PREPARED BY:

Ellen Grauer
COURT REPORTING



TOWER 56, 126 EAST 56TH STREET, FIFTH FLOOR, NEW YORK, NEW YORK 10022

PHONE: (212) 750-6434 FAX: (212) 750-1097

WWW.ELLENGRAUER.COM

NATIONAL UTILITY SERVICE

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BRUCE EDSON - 2/27/08

VS TIFFANY & CO

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- (1) Q. Did you send e-mails relating to
 (2) that line item expense?
 (3) A. To the line item expense, no.
 (4) Q. My questions now refer specifically
 (5) to the line item expense that was brought to
 (6) your attention by Brian in October of 2006.
 (7) A. I understand.
 (8) Q. So, you did not send e-mails
 (9) relating to that line item expense, is that
 (10) right?
 (11) A. Yes.
 (12) Q. Yes, that's correct?
 (13) A. Yes, I did not send or have any
 (14) conversation relative to that line item with
 (15) anybody at Tiffany & Company.
 (16) Q. Okay. Did you receive any e-mails
 (17) from Brian with respect to that line item
 (18) expense?
 (19) A. No.
 (20) Q. Did Brian tell you whether or not
 (21) he had spoken with anyone at Tiffany about that
 (22) line item expense?
 (23) A. No.
 (24) Q. Are you aware of Brian having taken

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- (1) any action with respect to that line item
 (2) expense?
 (3) A. I am not aware.
 (4) Q. And when was the next conversation
 (5) you had with Brian where he told you that, in
 (6) fact, that line item expense related to the
 (7) electric service?
 (8) A. I don't know.
 (9) Q. When did you learn that the meters
 (10) for electric service had been replaced?
 (11) A. Through this e-mail that you just
 (12) asked me to look at, the one that states that
 (13) the meter had been replaced. So I guess that
 (14) would be the one that – dated January 11, 2007
 (15) at 4:08.
 (16) Q. That's from Christine Amundsen to
 (17) Bruce Mogel and Anthony Zelanti?
 (18) A. Yes.
 (19) Q. And in that e-mail she asks also,
 (20) "Do you know the reason why LIPA was changing
 (21) the meter last September?"
 (22) A. Yes.
 (23) Q. That's when you first learned that
 (24) the meters had been changed?

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- (1) Q. Yes.
 (2) Q. Was the second conversation you had
 (3) with Brian relating to the reason for the line
 (4) item expense around the same time as this
 (5) e-mail?
 (6) MR. MITCHELL: Can I have that
 (7) question again, please?
 (8) (Record read.)
 (9) MR. GOODMAN: Let me clean that up
 (10) and I'll restate it.
 (11) Q. Do you recall the second
 (12) conversation that you described that you had
 (13) with Brian?
 (14) A. Yes.
 (15) Q. Okay. And in that conversation you
 (16) talked about or he told you about the reason
 (17) for the line item expense?
 (18) A. Yes.
 (19) Q. Okay. Did that conversation take
 (20) place around the time of Christine's e-mail on
 (21) January 11, 2007?
 (22) A. No.
 (23) Q. Was it before or after?
 (24) A. Before.

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- (1) Q. How soon before?
 (2) A. I believe it was around Christmas
 (3) week.
 (4) Q. Did you exchange any e-mails with
 (5) Brian about that subject around Christmas week?
 (6) A. I don't recall.
 (7) Q. You testified that you first
 (8) learned about the meter change on January 11th;
 (9) correct?
 (10) A. Yes.
 (11) Q. But you're testifying also that
 (12) Brian told you that the reason for the line
 (13) item expense resulted from the meter change;
 (14) correct?
 (15) MR. MITCHELL: Objection.
 (16) A. No.
 (17) MR. MITCHELL: That's not what he
 (18) said.
 (19) Q. What did Brian say to you about the
 (20) line item expense and what he had learned about
 (21) the reason for it?
 (22) A. Brian told me that the line item
 (23) expense had something to do with electrical
 (24) usage in the Manhasset branch.

NATIONAL UTILITY SERVICE VS. TIFFANY & CO.

BRIAN ENSOR - 5/14/08

CONCORDANCE AND CONDENSED TRANSCRIPT
PREPARED BY:



TOWER 56, 126 EAST 56TH STREET, FIFTH FLOOR, NEW YORK, NEW YORK 10022

PHONE: (212) 750-6434 FAX: (212) 750-1097

WWW.ELLENGRAUER.COM

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BRIAN ENSOR - 5/14/08

VS. TIFFANY & CO.

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(1) (2) of the meter for the electric service at the
 (3) Manhasset location?
 (4) A. Yes.
 (5) Q. And when did you first become aware
 (6) of the replacement of the meter?
 (7) A. Through information shared sometime
 (8) in the latter part of the fiscal year 2006.
 (9) Q. When does the fiscal year begin and
 (10) end?
 (11) A. Begins February 1 through January
 (12) 31.
 (13) Q. How did you first become aware that
 (14) the meter had been changed at the Manhasset
 (15) store?
 (16) A. Through Bruce Mogel corresponding by
 (17) Email.
 (18) Q. Have you ever learned why the meter
 (19) was changed?
 (20) A. No.
 (21) Q. Did there come a time when you
 (22) became aware of an unusual electric usage
 (23) pattern at the Manhasset store?
 (24) MR. MITCHELL: Object to the form of
 (25) the question.

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(1) (2) A. Yes.
 (3) Q. How many conversations in total did
 (4) you have with Bruce about the increase in
 (5) supplies costs?
 (6) A. I don't have an exact remember – I
 (7) can't remember exactly how many. It was more
 (8) than one.
 (9) Q. Okay. Do you recall when the first
 (10) conversation you had with Bruce?
 (11) A. Late in the fiscal year.
 (12) Q. Are you able to fix a month?
 (13) A. Not a specific month, no.
 (14) Q. As you sit here today, are you
 (15) unable to say whether that conversation
 (16) occurred in November, December 2006 or
 (17) January 2007?
 (18) A. I don't remember exactly. It's late
 (19) in that year.
 (20) Q. What did you say to Bruce and what
 (21) did he say to you?
 (22) A. My conversation would simply be to
 (23) alert Bruce to the unusual dollars spent on
 (24) supplies against our planned forecasts and
 (25) asking him to look into it.

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(1) (2) A. At the latter part of 2006, we,
 (3) through the monthly reportings that we have
 (4) available to us, we saw an increase in our
 (5) supplies costs, which I remember.
 (6) Q. I'm sorry, what is the last thing
 (7) you said?
 (8) A. I remember an increase in our
 (9) supplies cost.
 (10) Q. You're referring to we and is there
 (11) someone else with whom you made that
 (12) observation?
 (13) A. With the operations manager, Bruce
 (14) Edson.
 (15) Q. Did you make the observation that
 (16) there was an increase in electric costs or was
 (17) it more generically costs of supplies for the
 (18) store?
 (19) A. My observation was more generic,
 (20) supplies.
 (21) Q. Did you have a conversation with
 (22) Bruce Edson about this?
 (23) A. Yes.
 (24) Q. Did you have more than one
 (25) conversation with Bruce about this observation?

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(1) (2) Q. Do you actually remember saying that
 (3) to him or is that something that you think you
 (4) would have said under the circumstances?
 (5) A. In the circumstances, from what I
 (6) remember two years ago, that would have been
 (7) really the gist of what I would have said,
 (8) yeah. The exact words, I can't remember, but
 (9) the gist of these expenses are beyond our
 (10) planned expenses, can you look into that?
 (11) Q. And what was Bruce's response, if
 (12) anything?
 (13) A. To go away and take a look at what
 (14) the expense ~ expenditure was. I mean, give
 (15) me an explanation for it.
 (16) Q. Did he ever report back to you with
 (17) an explanation?
 (18) A. In the time that we were
 (19) investigating and Bruce was investigating, the
 (20) facilities team had also been looking into that
 (21) expense, and through Bruce Edson and Bruce
 (22) Mogel collaboratively and collectively,
 (23) information was sent back to me.
 (24) Q. Do you know how the facilities team
 (25) became aware of the reason for the increased

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- (1) (2) first.
 (3) Q. Okay. And did you read these
 (4) reports at or around the time they were issued?
 (5) A. Most times.
 (6) Q. Okay. Did you read them on a
 (7) monthly basis?
 (8) A. Yes.
 (9) Q. Okay. So always within the month
 (10) that the report was issued, you would review
 (11) these reports; is that fair?
 (12) A. Yes.
 (13) Q. Okay. And you would get the reports
 (14) that are contained in Exhibit 80 before you
 (15) would get the blue book report, right?
 (16) A. Yes.
 (17) Q. Okay. Now, looking at this
 (18) October 11, 2006 report for the period ending
 (19) September 30, 2006, I'd like to focus your
 (20) attention on the Utility line, okay?
 (21) A. Yes.
 (22) Q. Do you see that? Okay. Now, it
 (23) shows that for the prior year, September 30,
 (24) 2005, the Manhasset store spent \$8,569 for
 (25) utilities. Do you see that?

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- (1) (2) A. Yes.
 (3) Q. The planned amount for the month of
 (4) September 2006 in the budget was \$8,000,
 (5) correct?
 (6) A. Yes.
 (7) Q. Okay. So with respect to the plan
 (8) versus the prior year actual, whoever prepared
 (9) that project that had utility costs would be
 (10) lower for September than they had been the
 (11) prior year, correct?
 (12) A. Yes.
 (13) Q. And that projection is based not
 (14) just on prior year, but on the review of a
 (15) number of years of actual usage; is that
 (16) correct?
 (17) A. Yes.
 (18) Q. Okay. Now, the middle column on the
 (19) left side for monthly shows that the actual
 (20) amount spent on utilities for the Manhasset
 (21) store in September 2005 was \$14,243. Do you
 (22) see that?
 (23) A. Yes.
 (24) Q. Which the next two columns show is
 (25) \$5,674 over what you'd spent the year before,

- (1) (2) correct?
 (3) A. Yes.
 (4) Q. And \$6,243 over budget, correct?
 (5) A. Yes.
 (6) Q. In fact, if you look at the charge,
 (7) it's almost twice as much being spent on
 (8) utilities in September 2006 than were spent on
 (9) utilities in September 2005, correct?
 (10) MR. GOODMAN: Objection to the form.
 (11) MR. MITCHELL: Withdrawn.
 (12) Q. The document reflects a variance
 (13) over budget of 1.78 percent, correct?
 (14) A. Yes.
 (15) Q. I'm sorry, that's wrong.
 (16) A. 178 percent.
 (17) Q. Yeah, so you are just under two
 (18) times for the month alone over budget, right?
 (19) A. Yes.
 (20) Q. So it was visible on a report
 (21) generated by Tiffany delivered to you on
 (22) October 11, 2006 that for the month of
 (23) September 2006, utility costs at the Manhasset
 (24) store were 178 percent of budget for that month
 (25) alone, correct?